IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6039 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SURJIBHAI SHANABHAI BARANDA

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 6039 of 2001

MR SHAKEEL A QURESHI for Petitioner No. 1

MR DESAI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/08/2002

ORAL JUDGEMENT

The petitioner is serving as PI with the Police Department, who had been given promotion to the said post

by order dated 11.10.1993 (Annexure "D"). Earlier while he was working as PSI, because of certain complaints/prosecution, he was placed under suspension with effect from 26.2.1988 to 31.3.1992, whereafter he was reinstated in the cadre of PSI. He was prosecuted under Prevention of Corruption Act and came to be acquitted by Special Court, Baroda, by judgement and order dated March, 11, 1992. While the petitioner was under suspension, some of his juniors came to be promoted and the seal cover procedure was not followed in respect of the petitioner at that point of time. However, when the petitioner came to be promoted by order dated 11.3.1993, deemed date is not given. He therefore made a representation in this regard before appropriate authority for granting him promotion from the date on which his juniors were promoted i.e. 24.6.1989. A reply was given that since his performance was not up to the mark, he is not given deemed date promotion (Annexure "F"). He carried the matter further to the higher office and ultimately, order came to be passed on 5.12.2001, stating that as the overall record was found to be not up to the mark for period prior to 1992, and because DPC for the year 1989, 1991 and 1992 did not found him fit for promotion, his case for deemed date promotion is rejected. Aggrieved by this, the petitioner has approached this Court.

2. Heard learned Advocate Mr. Qureshi for the petitioner. He has raised following contentions.

2.1 The consideration by the DPC and finding that overall record is not up to the mark for the period 1989, 1991 and 1992 is without any basis because admittedly during this period the petitioner was under suspension and therefore, there was no question of considering his past performance and thereafter in the year 1993, the petitioner is given promotion considering his performance. The petitioner is not seeking deemed date of promotion for period prior to 1989 during which period he had worked earlier. There was no basis for assessing the petitioner's work as not up to the mark when he had no opportunity to work because of suspension. The suspension came to be revoked on 31.3.1992 and thereafter, he came to be promoted in October, 1993. Mr. Qureshi also submitted that order of his reinstatement clearly indicates that period from 26.2.1988 till date he is reinstated, is considered to be as on duty. He is acquitted of the charges levelled against him by a Competent Criminal Court and therefore, denial of deemed date of promotion to the petitioner being unjust, arbitrary and without basis, petition may be allowed.

3. Learned AGP Mr. Desai appearing for the respondent submitted that the petitioner's performance prior to 1992 was found to be not upto the mark and therefore the DPC held in 1989, 1991 and 1992 did not find him to be fit for promotion. It is submitted that at the relevant time he was not found to be possessing merit and efficiency and therefore, he was not given promotion at that point of time and there is no question of now giving him deemed date of promotion as prayed for and the petition may therefore, be dismissed.

4. The Court has considered the contentions raised by both the sides. Learned AGP has placed before this Court, for perusal, the proceedings of Departmental Promotion Committees in order to enable this Court to appreciate the contention of the respondents that the petitioner's past performance was not up to the mark and therefore, his case for promotion from deemed date has been rejected.

5. It has to be noted that the petitioner was under suspension from 26.2.1982 to 31.3.1982 and he had not performed any official duty during this period and therefore there is no question of considering his performance and finding his performance to be not up to the mark for that period. It is also worthwhile to note that after his reinstatement from suspension on 31.3.1992, by legitimate inference, it can be said that there is nothing against him since he is being given promotion on 11.3.1993. Therefore this takes us going backwards from the date of order of promotion to 26.2.1988 during which there cannot be said to be anything adverse to the petitioner except that he was under suspension because of his involvement in corruption case for which he has been acquitted. The Court has before it file of the DPC held in May, 1989, which considered the case of the petitioner and found that his record is not satisfactory and is not fit. The factors considered were that of a failed ACB trap while the petitioner was at Meghraj and for that purpose he was reduced to minimum pay-scale for two years, and that there were some allegation of corruption while he was at Satlana Police Station in 1987. Thereafter there is file of DCP held in March, 1991, wherein the assessment was that over all record unsatisfactory and that he is not fit. The factor considered was pendency of the ACB case before Baroda Court. The other factors were not under consideration. Then after the petitioner was reinstated, he had approached this Court with Special Civil Application No. 6288 of 1993, which came to be withdrawn

by him on the basis of a statement made on bahalf of the respondents that DCP will decide the case of the petitioner on or before 10th September, 1993. The DCP therefore considered the case of the petitioner in September, 1993. That Committee took into consideration ACR of the petitioner for the years 1985, 1986 and 1987, where his performance was average. In the year 1988 his performance and assessment was good and for the years 1989, 1990 and 1991 it is stated that he was under suspension. There the Committee found him to be unfit. The factors considered by contemplated enquiries were for not drawing panchnama in a case bearing CR No. 256/84 at Chhani Police Station and thereafter the petitioner came to be promoted by order dated 11.3.1993.

6. Therefore, what emerges from the above record and developments is that the DCP which met in May, 1989 had considered only the incident of Meghraj and Satlana Police Station. Subsequent DCP met in March, 1991 had considered only pendency of ACB case at Baroda and the DCP in September, 1992 took into consideration stale incidents of 1984 of Chhani Police Station which were not part of earlier consideration. This was after reinstatement of the petitioner and thereafter, on acquittal in the criminal case, the petitioner came to be reinstated. This indicates that the only factor that was considered was pendency of the criminal case against the petitioner. The proposed Departmental action for the incident of 1984 has yet not even been initiated and he has been granted promotion thereafter, meaning thereby that contemplated action has been dropped. Now if the petitioner was considered not fit only on account of pendency of criminal case and on his acquittal he has been reinstated, it is difficult to accept the say of the respondent authorities that he is not given promotion with deemed date because the period for which deemed date is sought is such that during that time he has not performed his duties and there is no question of assessing his work and finding it to be not satisfactory.

7. Differently put, the petitioner seeks a deemed date of promotion from 24.6.1989. From that date till 31.3.1992, the petitioner was under suspension and there was no scope for the respondent authority to assess the work and therefore there is no basis for the contention that his past performance was not satisfactory atleast for this period. From 31.3.1982 till 11.10.1993, there is nothing adverse against the petitioner and he is given promotion on 11.3.1993. Therefore from 24.6.1989 to 11.10.1993, there is nothing adverse against the petitioner. What is observed by the DCP held in

September, 1992 of contemplated action has not materialised and promotion is given and therefore also there is no basis for the contention that his past performance is not up to the mark. The petitioner can be said to have denied deemed date of promotion for no reason. He is asking for promotion for the reason that his juniors have been promoted on 24.6.1989 and since he is promoted on acquittal from the criminal charges, he ought to be given that benefit. This having been denied, the case of the petitioner deserves acceptance. In this regard the decision in the case of Sulekhchand and Salekchand Vs. Commissioner of Police and ors. reported in 1994 Supp. (3) SCC 674 may be profitably referred to. In that case the employee was facing criminal prosecution and consequent suspension and Departmental proceedings. The criminal proceedings ultimately culminated into acquittal on merits. It was held that such prosecution could not furnish basis for denying promotion. In the instant case promotion is given, but question is of deemed date. In that decision the apex Court also observed that such a delinquent was required to be given promotion with effect from the date of promotion of his immediate junior. That is exactly what is prayed for by the present petitioner and the petition therefore deserves to be allowed and the same is accordingly allowed. Order dated 5.12.2001 passed by the Director General of Police refusing promotion to the petitioner with deemed date effect, is hereby quashed and set aside. The petitioner will be deemed to have been granted promotion from the date his immediate junior is granted promotion, which according to the petitioner is 24.6.1989. Rule is made absolute with no order as to costs. Direct service permitted.

(A.L.Dave, J.)

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